IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FOURTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 34411 of 1997

Between:

1 M.Prasad S/o.Innaiah
Nizamabad Municipality, Nizamabad R/o.Nizamabad
2 Smt.V.Leela W/o.M.Prasad
Nizamabad Municipality, Nizamabad R/o.Nizamabad
3 Smt.E.Nagamalleswari W/o.V.Srinvias
Nizamabad Municipality, Nizamabad R/o.Nizamabad
4 Smt.B.Geetha W/o.Kishan
Nizamabad Municipality, Nizamabad R/o.Nizamabad
5 C.Ramesh S/o.Venkayya
Nizamabad Municipality, Nizamabad R/o.Nizamabad
6 M.Sanga Reddy S/o.Kista Reddy
Nizamabad Municipality, Nizamabad R/o.Nizamabad
7 M.Balakrishna Prasad S/o.Raghavendra Rao
Nizamabad Municipality, Nizamabad R/o.Nizamabad
8 P.Govardhan Goud S/o.Srinivasa Goud
Nizamabad Municipality, Nizamabad R/o.Nizamabad
9 K.Vaman Rao S/o.Singaiah
Bodhan Municipality, Nizamabad

... PETITIONERS

AND

1 The Government of Andhra Pradesh rep.by its Secretary,
Municipal Administration Department, Secretariat, Hyderabad

2 The Commissioner and Director of Municipal Administration, Andhra Pradesh, Hyderabad
3 The Collector & Chairman Urban Basic Service for Poor Programme, Nizamabad
4 The Municipal Commissioner Nizamabad Municipality, Nizamabad
5 The Municipal Commissioner Bodhan Municipality, Bodhan, Nizamabad Dist
6 The Andhra Pradesh Administrative Tribunal Purani Haveli, Hyderabad rep.by its Registrar

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction particularly one in the nature of writ of certiorari after calling for the records relating to common order passed in OA.Nos.4629/97 to 4634/97, 4636/97, 4648/97, 4658/97, 4670/97 and 5099/95 Dt.05/11/1997 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad and quash the same and consequently declare that the orders issued terminating the services of the petitioners in proceedings Dt.3/7/1997 by the Collector and Chairman, UBSP, Nizamabad are wholly illegal, arbitrary and in violation of the principles of natural justice apart from being violative of Art.14 and 16 of the Constitution of India and pass such other order.

Counsel for the Petitioner: Mr.M.PANDURANGA RAO, Advocate

Counsel for the Respondents : GP FOR SERVICES I

The Court made the following:

J U D G M E N T:

(per G. Bikshapathy J)

1. The Writ Petition arises out of the common Order passed by the Andhra Pradesh Administrative Tribunal in O.A.NOs. 4629 of 1997 to 4634 of 1997, 4636 of 1997, 4648 of 1997, 4658 of 1997, 4670 of 1997 and 5099 of 1995, dated: 5.11.1997.

2. O.A.NO. 5099 of 1995 was filed by the petitioners for regularisation of the services and other O.As. were filed challenging the termination of their services by proceedings dated: 3.7.1997 issued by the Collector and Chairman of Urban Basic

Service for the Poor, Nizamabad.

3. On the directions issued by the Government of India with regard to the implementation of the Urban Basic Service in the State of Andhra Pradesh, the scheme was made applicable from 1986 onwards in 16 Municipal towns in five Districts of State of Andhra Pradesh. However, the Government of India introduced a new scheme Urban Basic Service for the Poor (for brevity “UBSC”). The detailed guidelines were issued by the Government of India for implementation of the scheme and the entire expenditure was to be borne by the Government of India under the scheme. Accordingly, for the year 1990-91, a sum of Rs. 182.20 lakhs was sanctioned. As per the scheme, the State Government was required to work out total number of beneficiaries likely to be covered on the basis of the administrative allocation and per capita norms ranging from Rs. 58/- to Rs. 75/- and also select beneficiaries under the Urban Slum Pockets. The State Government has selected among other Districts Nizamabad District and the scheme was directed to be implemented in Nizamabad proper and Bodhan Municipalities. For the purpose of implementation of the scheme, the Government of Andhra Pradesh sanctioned the post of Asst. Project Officers. Nine posts were sanctioned for Nizamabad District. The District Collector-Chairman of the District Monitoring Cell was required to make selections for the posts of Asst. Project Officers. Accordingly, a notification was issued in the Press as well as in the Employment Exchange. Written examination and the oral tests were held. All the petitioners except Smt. B.Geetha and P. Govardhan Goud were appointed as Asst. Project Officers in Nizamabad Municipality and Bodhan Municipality of Nizamabad District. With regard to Smt. B. Geetha (Writ Petitioner No.4 in W.P.No. 34411 of 1997) (Applicant in O.A.NO. 4632 of 1997), she was initially appointed as Community Organiser by Collector, Mahabubnagar on 20.4.1987 and posted to work in Mahabubnagar Municipality. She sought for absorption as Asst. Project Officer on the recommendation of the Collector, Nizamabad and the Joint Collector, Mahabubnagar. The Government issued clearance for her appointment as Asst. Project Officer, Nizamabad in the newly created post and accordingly she was appointed with effect from 24.11.1991.

4. With regard to Mr. P. Govardhan Goud, 8th petitioner, it was submitted that he was rendering necessary assistance regarding valuation of civil works. Therefore, he was appointed by the Collector, Nizamabad, as Technical Supervisor in the U.B.S.P. Nizamabad. It is the case of the petitioners that ever since they were appointed, they have been discharging their duties to the best of their ability and to the entire satisfaction of their controlling Officers. No complaint whatsoever was brought to their notice with regard to the discharge of their functions. However, the salaries of the petitioners were stopped from October, 1996. Even though, representations were made, salaries were not paid and no reasons were being given for withholding salary. When the matter was represented to the Government, the Government directed the respondent and other officials for immediate payment of salaries, however, salaries were not paid. The petitioners were appointed initially on contract basis for one year on a remuneration of Rs.1,700/- per month. But, however, the appointment continued indefinitely. Since, their services were not regularised for having worked for several years, all the petitioners filed O.A.NO. 5099 of 1995 in Andhra Pradesh Administrative Tribunal for regularisation of their services and the same was pending. It is also their case that similarly situated persons appointed under the scheme in other States like Haryana, New Delhi etc. were paid regular scales of pay.

5 . While so, during the review meeting of the implementation of the U.B.S.P. for Nizamabad and Bodhan held on 4.7.1997 under the Chairmanship of District Collector, certain irregularities were alleged in the functioning of the scheme. Local Fund Accounts Officer and the Audit Officers were asked to take up the audit proceedings. Simultaneously, the District Collector appointed Nodal Officers and Technical Officers to verify the works of U.B.S.P. with respect to quality and cost. Accordingly, Audit Officers and Nodal Officers submitted their report on 8.11.1996 and 20.11.1996. Basing on the said reports, the charges were framed against the petitioners and charge memos were issued to them alleging that there were no

proper measurements for the works completed and the payments were made in excess and that there were no vouchers in support of the payments and thus over-payments were made and amounts were misappropriated. The charges were denied by the petitioners. But, however, without affording any further opportunity and without conducting any enquiry in accordance with rules and in gross violation of the principles of natural justice, a stereotyped Order dated: 3.7.1997 was passed by the District Collector-3rd respondent herein terminating the services. The said terminations came to be challenged by the petitioners in the O.As. referred to above.

6. It was the case of the petitioners that they were appointed to regular posts and that they were entitled for regularisation and for which O.A.NO. 5099 of 1995 was pending and in order to circumvent their demand and to throttle the service continuity, salaries of the petitioners were stopped abruptly without there being any reason from October, 1997 and without giving any notice to them. It was also the contention of the petitioners that their services could not be terminated, without conducting proper enquiry and without affording proper opportunity. When the charges were framed on the basis of the alleged reports of the Audit Officer and Nodal Officer, such reports were not furnished to them and the charges ought to be established in the regular enquiry. Neither witnesses were examined in the enquiry nor any opportunity was given to the petitioners to cross-examine the witnesses or opportunity was given to them to offer their statements.

7. It is the case of the petitioners that they were executing the instructions of the higher Officers namely Project Officer and Municipal Commissioners. They have no independent powers to execute any work and that they have been discharging the duties only on the specific directions of the higher Officers. Under those circumstances, the question of entrusting the work running into lakhs of rupees does not arise. Therefore, it is only with a view to protect the higher Officers, the petitioners were made scapegoats and the services were illegally terminated and thus terminations are illegal and in violation of Article 311 of Constitution of India.

8. It is further brought out before the tribunal that similarly situated persons, who were appointed as Asst. Project Officers in the other Districts of the State, where the U.B.S.P. scheme was implemented, they were absorbed as Community Organisers in pursuance of the rules framed by the Government in G.O.Ms.No. 547 Municipal Administration and Urban Development Department, dated: 13.10.1998. The said G.O. was issued in exercise of the powers conferred by proviso to Article 309 of Constitution of India and the rules called A.P. Urban Poverty Alleviation (Municipal Administration) Service Rules were brought into effect. Under the said Rules, the post of Community Organisers were to be filled by direct recruitment through Employment Exchange and giving notification in the newspapers. But, under proviso (3), the Asst. Project Officers working under U.B.S.P. will be absorbed as Community Organisers. Therefore, such of those A.P.Os. who were in service as on date of G.O. were absorbed as Community Organisers and this benefit was denied to the petitioners on account of the illegal termination of services of the petitioners.

9. The challenge made by the petitioners was opposed by the respondent on the ground that it is a contract appointment and the petitioners were not holding the civil post and therefore, Article 311 of Constitution of India was not applicable to them. The termination took place by virtue of the contract appointment as they were appointed for one year initially and they continued as such till the services were terminated. The appointment was terminated under the terms of the contract and therefore, it is not open for them to challenge the same before the tribunal. It is also submitted that the petitioners failed to discharge their duties properly and there was number of audit objections and they resorted to large scale misappropriation and therefore, the Audit Officer and the Nodal Officers were directed to enquire into the matter and submit reports. Basing on the reports of these Officers, charge memos were issued to them. Some of the petitioners submitted explanation and some of them have not submitted. But, however, on the recommendations of the Nodal Officers, some of the charges were held to be proved and therefore, they were

terminated from service. Hence, no enquiry need be conducted into the alleged irregularity committed by them and failure to conduct the enquiry would not nullify the action of the authorities in terminating the services.

10. The learned tribunal, however, held that the petitioners were not holding the civil post in the State Government and their services were terminated under the terms of the contract and therefore, they cannot seek any protection under Article 311 of Constitution of India. The tribunal further held that the work of the applicants was unsatisfactory and they were responsible for embezzlement of lakhs of rupees. They were also given the opportunity of representation. Holding that termination Orders were issued by invoking the terms and conditions of appointment and therefore, the termination of services was legal and accordingly dismissed the O.As. by an Order dated: 5.11.1997. However, the tribunal directed the respondents to pay the salary from October, 1996 till the date of their termination. As already noted above O.A.NO. 5099 of 1995 was filed for regularisation since the termination was upheld the tribunal did not go into the aspect of the regularisation of the services and accordingly it was also dismissed. Against the said common Order, the present Writ Petitions have been filed by the petitioners before this Court.

11. The learned counsel for the petitioners submit that the finding recorded by the tribunal is wholly misconceived. Even though, they were appointed on contract basis, the tribunal failed to see the protection of Article 311 of Constitution of India was still available, when they were sought to be terminated on the basis of the alleged charges. No proper opportunity was given to them and without conducting enquiry in accordance with rules, the termination Orders could not have been issued. The learned counsel would submit that the petitioners were appointed in accordance with rules or atleast they shall be deemed to have been appointed under Rule 9 of A.P. State and Subordinate Service Rules, 1996 and therefore, termination of their services cannot be effected without following the Rules. He submits that even under the Rules A.P. State & Subordinate Service Rules, 1996,

the contract appointment is also an appointment of the Service Rules and therefore, it is a civil post. Their services were terminated on the ground that they committed misconducts including misappropriation of funds. In such an event, even if they were appointed on contract basis, yet, without conducting proper enquiry their services cannot be terminated under the cloak of simple termination under the contract of appointment.

12. Per contra the learned counsel for the respondents submit that the petitioners were appointed on contract basis and therefore, their services were validly terminated under the terms of the contract. The Tribunal correctly upheld the termination Orders. Hence, the Writ Petition is liable to be dismissed.

13. The issue that calls for consideration is whether the Order of the tribunal is sustainable in law?

14. Admittedly, all the petitioners except two petitioners referred to above were appointed on 24.11.1991. The appointment Order was issued in pursuance of the directions issued by the Government in G.O.Ms.No. 269, dated: 17.5.1991. The following are the conditions of appointment:

"1. The candidates should execute an agreement binding himself/herself to abide by the terms of contract laid down therein. A proforma contract agreement from is available with the concerned Municipal Commissioner.

2. The candidates should furnish their original certificates with regard to qualification, age and experience etc. at the time of their reporting to the Municipal Commissioners who in return will cause verification of these certificates and will send their report to the undersigned a report on the verification of certificates.

3. The undersigned reserves the right to terminate the contract at any time if it is found that the implementation of the U.B.S.P. is slow and the work of the APOs is not satisfactory.

4. The contract is also liable for termination at any time without notice and without

assigning any reasons therefore and the candidates will be discharged from service following termination of contract."

15. Under the contract agreement, the following are some of the terms:

"1. The contract is for a period of one year with effect from 24.11.1991 likely to be renewed for further periods subject to the satisfactory performance of the incumbent.

2. The contract is liable for termination at any time without any prior notice or assigning any reasons thereof.

3. A monthly remuneration of Rs. 1,700/- plus a Conveyance allowance of Rs. 100/- per month is paid for working as Assistant Project Officers.

4. The Job work to be performed by the Assistant Project Officer is given in the Annexure. The Asst. Project Officer is required to work within the beneficiary communities as per the convenience of these communities.

5. This contract does not accrue any rights privileges on the incumbent to cm for regular appointment in Government service or continuance in the post.

6. Persons coming under this contract shall work under the control and as per the direction of the Project Officer (U.B.S.P.) Municipal Commissioner, Nizamabad and shall abide by the rules and Regulations in vogue in department. They shall submit Monthly/Fortnightly diaries on their field work, and progress reports on the U.B.S.P. activities as prescribed under scheme."

It is a cyclostyled Order issued to all the petitioners except two petitioners referred to above. But, even in respect of the other two petitioners similar conditions were stipulated in their respective appointments.

16. The respondents tried to take the plea that the appointment is governed by the contract between the respondents and the employee and therefore, it is always open for the respondents to terminate the services.

17. Let us consider how far their engagement is covered by the provisions of the relevant service Rules. The Government issued G.O.Ms.No. 436, dated: 15.10.1996

framing the Rules called A.P. State and Subordinate Service Rules, 1996. The said Rules were framed in supersession of the earlier 1962 Rules. Under Rule 4 of the said Rules, the method of appointment is stipulated. One of such method permitted under the rule is by contract appointment. Rule 4 is extracted below:

"4. Method of appointment :-(a) Appointment to any service, class or category shall be by one or more of the methods indicated below as may be specified in the Specials Rules applicable to the relevant post,--

(1) Direct recruitment;
(2) Recruitment / Appointment by transfer;
(3) Promotion; or
(4) Contract / Agreement / Re-employment.

b. xxx

c. xxx"

18. Rules 9 covers appointment by agreement or contract, which reads thus:

"9. Appointment by agreement or contract :--(a) (i) Notwithstanding anything contained in these rules or special rules it shall be open to the State Government to make appointment to any post in a service, class or category, otherwise than in accordance with these rules or special rules and to provide by agreement or contact with the person(s) so appointed, for any of the matters in respect of which, in the opinion of the State Government, special provisions are required to be made and to the extent to which such provisions are made in the agreement or contract, nothing in these rules or the special rules shall apply to any person so appointed in respect of any matter for which provisions is made in the agreement or contract:

Provided that in every agreement or contract made in exercise of the powers conferred by these rules, it shall further be provided that in respect of any matter in which no provision has been made in the agreement or contract provisions of these rules or special rules relatable to the post shall apply.

(ii) The agreement or contract may inter alia include provisions in respect of conditions of service, pay and allowances, discipline, contract period of appointment notice period for termination of appointment by either party and other relevant matters.

(iii) The Government may, be order, prescribe the form of such agreement of contract.

(b) A person appointed under sub-rule (a) shall not be regarded as a member of the service, in which the post to which he is appointed, is included and shall not be entitled by reason only of such appointment, to any preferential right to any other appointment in that or in any other service."

19. In case of necessity to fill up the vacancies on emergency basis in public interest, rule 10 covers the situation. Therefore, under 1996 Rules also the appointment by contract is recognised as one of the modes of appointment and consequently the A.P. Civil Services (C.C.A.) Rules, 1991 are made applicable to the appointment made under the A.P. State and Subordinate Service Rules. Under the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 (for brevity "C.C.A. Rules"), the Government servant is defined as follows:

"'Government Servant' means a person who

(i) is a member of a Civil Service of the State or holds a civil post in connection with the affairs of the State, whether temporary or permanent appointed thereto before, on or after the date specified in rule 1 and includes such Government Servant whose services are temporarily placed at the disposal of the Government of India, the Government of another State or a company, corporation or organisation owned or controlled by Government, or a local or other authority, notwithstanding that his salary is drawn from sources other than the Consolidated Fund of the State.

(ii) is a member of a Civil Service of or holds a civil post under the Government of India or the Government of another State and whose services are temporarily placed at the disposal of Government;

(iii) is in the service a local or other authority and whose services are temporarily placed at the disposal of Government"

Therefore, the petitioners, who were employed on contract basis can be said to hold a civil post in connection with the affairs of the State and they are entitled for protection under Article 311 of the Constitution of India. Further they were appointed in 1991 for a period of one year and they were continuing for the last several years without any renewal of contract, in such a situation, the issue that arises for consideration is whether they continued to be the contract employees or whether they are to be treated as temporary employees?

20. When once the period of one year has expired and when the tenure has not been extended, nor their services were terminated on the expiry of one year but, yet, they are continued in the said post, it has to be held that they are deemed to have been appointed on temporary basis in respective posts as held by the Supreme Court.

21. When a contract for a fixed term expires, it is open to Government to reemploy the Officer on a fresh basis, and if the re-employment is made on different terms, the Officer holds on the terms of such re-employment, even though the new terms were inferior. If, however, after the expiry of the contractual period, no fresh engagements is made and the Officer continues to hold on without any period being fixed, he holds on as a 'temporary' Government servant, and Article 311(2) of Constitution of India would be applicable to the termination of such temporary employment (See: Para 3 Page 1405 of Shorter Constitution of India – Dr. D.D. Basu 13th Edn. Reprint). In view of the above legal position, the petitioners are to be treated as temporary employees in which event they would swim into the protection of Article 311 of Constitution of India.

22. The subsequent question that calls for consideration is whether the impugned Order is termination simplicitor or penal in nature attaching stigma.

23. It is now well settled by the catena of decisions of the Supreme Court that even temporary employee if he is sought to be terminated for a misconduct, an enquiry has to be conducted duly giving opportunity to the employee and thereafter appropriate Orders have to be passed.

24. The issue has been considered by the Supreme Court time and again right from 1958. The petitioners are undoubtedly appointed on contract basis. Even assuming

that the petitioners were appointed on contract basis, they were deemed to be temporary employees. It cannot be said that they have a right to the post. But, however, can they be terminated from service on the ground of misconduct by touching the stigma to their career without proper enquiry by passing Order of termination simplicitor.

25. In PARSHOTAM LAL Vs. UNION OF INDIA, it has been observed by the Supreme Court as follows:

"In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie the termination is not a punishment and carries with it no evil consequences and so Art. 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art. 311 must be complied with ... ."

26. In the case of STATE OF PUNJAB Vs. SUKH RAJ BAHADUR the following propositions were laid down by the Supreme Court while considering the question whether in case of termination of service of a temporary servant or a probationer, Art. 311(2) of the Constitution would be affected or not. The propositions are as follows:

"1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.

2. The circumstances preceding or attendant on the order of termination have to be examined in each case the motive behind it being immaterial.

3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service does not attract the operation of Article 311 of the

Constitution.

5. If there be a full-scale departmental enquiry envisaged by Article 311 i.e. an Enquiry Officer is appointed, a charge-sheet submitted explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."

27. This decision was again considered by the Supreme Court in STATE OF BIHAR Vs. SHIVA BHIKSHUK MISRA in connection with the reversion of an officiating Subedar Major to his substantive post of Sergeant. In that case the respondent held the substantive post of Sergeant in the Bihar Police Force till 31/07/1946. On 1/08/1946 he was promoted to the higher post of Subedar. In January 1948 he was further promoted to officiate temporarily as Subedar Major. In October 1950, the Commandant of the Bihar Military Police, Muzaffarpur wrote to the Deputy Inspector of Police, Armed Forces suggesting that he should be censured for having assaulted an orderly. Thereafter, the Inspector General of Police reverted the respondent to the post of Sergeant. The said order of reversion was challenged and it was held by the Supreme Court that :-

"So far as we are aware no such rigid principle has ever been laid down by this Court that one has only to look to the order and if it does not contain any imputation of misconduct or words attaching a stigma to the character or reputation of a Government Officer it must be held to have been made in the ordinary course of administrative routine and the Court is debarred from looking at all the attendant circumstances to discover whether the order had been made by way of punishment. The form of the order is not conclusive of its true nature and it might merely be a cloak or camouflage for an order founded on misconduct. It may be that an order which is innocuous on the face and does not contain any imputation of misconduct is a circumstance or a piece of evidence for finding whether it was made by way of punishment or administrative routine. But the entirety of circumstances preceding or attendant on the impugned order must be examined and the overriding test will always be whether the misconduct is a mere motive or is the very foundation of the order."

The order of reversion was held to be by way of punishment and as such it was set aside.

28. In STATE OF U.P. Vs. SUGHAR SINGH a permanent Head Constable in the U.P. Police Force was appointed as officiating Platoon Commander in the combined

cadre of Sub-Inspector, Armed Police and Platoon Commander. He was subsequently reverted to the substantive post of Head Constable in 1968. At the time of reversion he was one among a group of about 200 officers most of whom were junior to him. Two questions arose, namely whether the order of reversion is attendant with any stigma and secondly whether there has been any discrimination violating Arts. 14 and 16 of the Constitution. It was held that so far as reversion is concerned, the order of reversion did not cast any stigma, nor it has any evil consequences as the respondent neither lost his seniority in the substantive rank, nor there has been any forfeiture of his pay or allowances. It was also held that the order was liable to be quashed on the ground of contravention of Arts. 14 and 16 of the Constitution inasmuch as while the respondent had been reverted, his juniors were allowed to retain their present status as Sub Inspector and they have not been reverted to the substantive post of Head Constable. It was further held that there was no administrative reason for this reversion, so the order was held bad.

29. The question whether the order terminating the service of a probationer made according to the terms of appointment can never amount to punishment in the facts and circumstances of the case was considered by a Bench of 7 Judges of the Supreme Court in the case of SHAMSHER SINGH Vs. STATE OF PUNJAB(AIR 1974 SC 2192). In that case the services of two Judicial Officers who were on probation were terminated by the Government of Punjab on the recommendation of the High Court under R. 7(3) in Part D of the Punjab Civil Services (Judicial Branch) Rules 1951 as amended. The services of the probationers were terminated without saying anything more in the order of termination. This was challenged on the ground that though the order on the face of it did not attach any stigma, yet the attendant circumstances which led to passing of the order if considered then the orders would amount to have been made by way of punishment violating Article 311 of the Constitution. It has been observed relying on the observations of the Supreme Court in PARSHOTAM LAL DHINGRA Vs. UNION OF INDIA (AIR 1958 SC 36) by A. N. Ray, C.J. as follows :-

"No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution."

30. This decision was followed and relied upon in the case of ANOOP JAISWAL Vs. GOVT. OF INDIA. In that case the appellant being selected for appointment in the cadre of I. P. S. was undergoing training as a probationer. On a particular day all the trainees arrived late at the place where P. T./unarmed combat practice was to be conducted, although prior intimation was sent to them in this regard. This delay was considered as an incident, which called for an enquiry. The appellant was considered to be one of the ring leaders who was responsible for the delay. Explanation was called for from all the probationers. The appellant in his explanation sincerely regretted the lapse while denying the charge of instigating others in reporting late. After receiving the explanations, all the probationers including the appellant were individually interviewed in order to ascertain the facts. On the basis of the explanation and interview, but without holding any proper enquiry the Director recommended to the Government of India that the appellant should be discharged from the service. The Government accordingly passed an order of discharge of the appellant on the ground of unsuitability for being a member of the I. P. S. This order was challenged in the Writ Petition. It has been held as follows:-

"Where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

31. The order was held to be bad as it was made on the ground of misconduct without affording reasonable opportunity to the appellant to defend himself as

provided under Article 311(2) of the Constitution.

32. In NEPAL SINGH Vs. STATE OF U.P. the service of the appellant Nepal Singh, who was employed in temporary capacity as Sub Inspector of Police, was terminated by an order of Deputy Inspector General of Police, Bareilly Range and the order merely stated that the appellant's services were not required any more and were terminated with one month's pay in lieu of notice. This order was challenged on the ground that it amounted to punishment and since no opportunity of hearing, as provided in the Article 311(2) of the Constitution, was afforded, the impugned order was liable to be quashed and set aside. It transpired at the time of hearing that a disciplinary proceeding was initiated against the appellant on the ground that he contracted the second marriage during the lifetime of his first wife and this act was done without obtaining prior permission of the Government, This disciplinary proceeding, however, was not proceeded with. Thereafter the Superintendent of Police, Shahjahanpur drew up a list to the effect that he was a corrupt officer and he was not straightforward. The impugned order was made thereafter. It was held that where allegations of misconduct were levelled against a Government servant and it was a case where provisions of Art. 311(2) of the Constitution should apply, it was not open to the competent authority to take the view that holding the enquiry contemplated by that clause would be a bother or a nuisance and that, therefore, it was entitled to avoid the mandate of that provision and resort to the guise of an ex facie innocuous termination order.

33. In JARNAIL SINGH Vs. STATE OF PUNJAB, the crucial question, which was decided by the Supreme Court was whether the impugned order of termination of services of the petitioners can be deemed to be an innocuous order of termination simplicitor according to the terms and conditions of the services without attaching any stigma to any of the petitioners or it is one in substance and in fact an order of termination by way of punishment based on misconduct and made in violation of the procedure prescribed by Article 311(2) of the Constitution of India. In other words when the order of termination is challenged as casting stigma on the service career, the Court can lift the veil in order to find out, the real basis of the impugned order

even though on the face of it the order in question appears to be innocuous.

34. In the said case the petitioners were appointed as Surveyors on ad hoc basis. The appointment Order reads thus:

"The following officials are hereby appointed as Surveyors in the grade of Rs. 140-6-170/8-210/10-300 up to 28-2-1977 or up to the date till the regular candidates are recommended by the Board, whichever is less, on ad hoc basis and are posted under the officers mentioned against their names.

Their services can be dispensed with any time without any notice or reason. These candidates will have to produce their concerned certificates to the concerned officers before the submission of the joining report"

35. The Government issued Orders for regularising the services of the ad hoc employees, who have completed one year of service. But, however, the case of the petitioners was not considered and their services were terminated with effect from 31.1.1981 and thus termination Orders came to be challenged. The Supreme Court observed as follows:

“In the instant case as we have stated already hereinbefore that though the impugned order was made under the camouflage or cloak of an order of termination simplicitor according to the terms of the employment, yet considering the attendant circumstances which are the basis of the said order of termination, there is no iota of doubt in inferring that the order of termination had been made by way of punishment on the ground of misconduct and adverse entry in service record without affording any reasonable opportunity of hearing to the petitioners whose services are terminated and without complying with the mandatory procedure laid down in Article 311(2) of the Constitution of India.”

36. The Supreme Court further observed:

“The position is now well-settled on a conspectus of the decisions referred to hereinbefore that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simplicitor in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and

foundation of the order complained of. In other words, the Court, in such case, will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency or not. In the instant case we have already referred to as well as quoted the relevant portions of the averments made on behalf of the State respondent in their several affidavits alleging serious misconduct against the petitioners and also the adverse entries in the service records of these petitioners, which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without following the procedure provided in Article 311(2) of the Constitution of India, while considering. The fitness and suitability of the appellants for the purpose of regularising their services in accordance with the Government Circular made in October, 1980. Thus the impugned orders terminating the services of the appellants on the ground that "the posts are no longer required" are made by way of punishment."

37. As can be seen from the material placed before the tribunal and also before this Court that the serious allegations were levelled against the petitioners not only dereliction of duties, but also alleged misappropriation of huge amounts. While, they denied the charges framed against them, the remarks of the Nodal Officer, who conducted enquiry earlier was called for and in fact number of charges were also dropped. But, however, without there being any proper enquiry, they were found guilty of the alleged misconducts. Even the report of the enquiry authority holding the petitioners guilty of certain charges were not furnished. In fact this situation was not disputed by the respondents. Even in the counter filed by the Commissioner-Nizamabad Municipality in W.P.No. 34411 of 1997 and Batch, it was stated that after submitting the explanation to the charge memo the concerned Nodal Officers furnished remarks on the explanation and basing on the remarks offered by the Nodal Officers, it was found by the petitioners were responsible for misappropriation. The following is the extract from the counter reveals the situation:

"It is submitted in reply to para No.3 that it is not correct to state that the respondents have framed false charges against the petitioners and dismissed from service. In this regard, it is submitted during the review meeting on the implementation of U.B.S.P. scheme in Nizamabad and Bodhan Municipalities held on 4.10.1996 under the Chairmanship of the District Collector, Nizamabad it was noticed that some serious irregularities have taken place in the functioning of U.B.S.P. Accordingly, a decision was taken to verify the Accounts of U.B.S.P. scheme of both Nizamabad and Bodhan Municipalities by Local Fund Accounts Officer, duly conducting regular

Audit. Accordingly, the Joint Collector in his Lr. No. D3/4579/96, dated: 17.10.96 addressed the Audit Officer Local Fund Nizamabad has submitted his reports vide his Lr. No. 507/A3/96, dated: 28.12.1996 and L.F.No. Spl./361/96-97, dated: 8.11.1996. Further the District Collector, Nizamabad in his proceedings No.D3/4579/96, dated: 29.11.96 appointed the Nodal Officers for Verification of purchases from the inception of the scheme with reference to quality and cost by the applicant and the works are to be inspected and submit reports. Accordingly the Nodal Officers have submitted their reports. Basing on the enquiry reports a charge Memo was issued on all the petitioners why disciplinary action should not be taken against the petitioners. In response to the charge memo the petitioners have submitted their explanation to drop all the charges. While forwarding the explanations to the concerned Nodal Officers they were instructed to furnish their remarks on the explanation. Basing on the remarks offered by the Nodal Officer it is found that the petitioners are held responsible for misappropriation of U.B.S.P. scheme funds and the enquiry reports have shown that the petitioners performance is poor. Further, the petitioners were given in writing in their agreement to the effect that they shall submit Fortnightly monthly diaries on their field work and progress reports to the U.B.S.P. authorities as prescribed under the scheme but nothing of this sort is available on record to therefore, it shows that there is no review of work on monthly basis the petitioners.

Therefore, the District Collector and Chairman in his proceedings No.D3/4579/96-2, dated: 3.7.1997 issued Orders terminating the contract of appointment of the petitioners. The contention of the petitioner that there is no documentary evidence supporting the framing the charges therefore, the charges framed and dismissed of the petitioner from services is not correct."

38. It is also stated in the counter that one of the conditions of the contract is that they shall work under the control and as per the directions of the Project Officer, condition NO.6 is extracted below:

"Persons coming under the contract shall work under the control and as per the direction of the Project Officer (U.B.S.P.) , Municipal Commissioner, Nizamabad and shall abide by the rules and regulations in vogue in department. They shall submit Monthly/Fortnightly diaries on their field work, and progress reports on the U.B.S.P. activities as prescribed under scheme.

Thus, two things are clear from the above counter that they have to work under the directions of Project Officers and Municipal Commissioners and they have to submit their progress Monthly and Fortnightly diaries regarding the field work. Under this situation, it is apparent that they are not independent executing authorities for any

work and they have to work under the superiors. In fact it is now clear that no action whatsoever was taken against the Officers, who were directly responsible for the alleged irregularities. When the dairies were to be submitted monthly and fortnightly and progress reports as prescribed under the scheme, it is not understood as to why the authorities did not initiate timely action. The alleged deficiencies or shortcomings were not brought to the notice of the petitioners at any point of time. It is only after a lapse of nearly five years, the respondents have come up with vague charges without giving any details whatsoever. As can be seen from the charges, they are so vague and unintelligible and no details are forthcoming as to how the misconducts were alleged to have been committed. Leave apart vagueness of the charges, there was no opportunity much less sufficient opportunity to establish their defence.

39. We have perused the charges in respect of each employee and we find that the charges are not specific and they are vague and unintelligible. We find that the charges were issued on the basis of the Nodal Officers report and the very same Nodal Officer was asked to give his remarks on which basis the employees were found guilty of the charges in respect of certain charges. The very procedure adopted by the authorities is illegal and in gross violation of the principles of natural justice. In asmuch as, when the employees were sought to be terminated for the alleged misconducts, they are entitled for fair and real opportunity before the termination is effected. This is totally lacking in this case. The alleged terms of contract of appointment cannot shield the respondents in any manner. On lifting the veil and considering the preceding and attending circumstances we reach the inevitable conclusion that the impugned termination Orders were passed as a measure of punishment casting serious stigma on their conduct and performance without conducting proper enquiry and without providing sufficient opportunity. The termination Orders were made under the camouflage or cloak of an Order or termination simplicitor in pursuance of contract of appointment. In fact the period of contract had expired long ago and neither the contract was renewed nor fresh contract was entered. When the misconduct is foundation and not a mere motive for termination and the said misconduct having not been enquired properly and finding

was recorded without giving proper opportunity and notice, passing the Order of termination is illegal and is void *ab initio* being in violation of Article 311 of the Constitution of India. Thus, we find that the tribunal gravely erred in observing that the petitioners did not hold the civil post and that the protection under Article 311 of Constitution of India was not available to them.

40. Accordingly, we set aside the Orders of tribunal and declare that the termination Orders issued on 3.7.1997 are illegal and arbitrary. Consequently, they are entitled for reinstatement with attendant benefits, which they could have got, but for the illegal termination.

41. It is also not disputed that similarly situate persons were absorbed as Community Organisers by virtue of the G.O.Ms.No. 547 M.A. & UDD, dated: 13.10.1998. But, for the illegal termination, the petitioners could have also been absorbed as Community Organisers. Under those circumstances, we direct that the petitioners shall be deemed to have been absorbed as Community Organisers from the date their counter-parts in other Municipalities were absorbed in pursuance of G.O.Ms.No. 547, M.A. dated: 13.10.1998 and they are entitled for all the benefits including the scales of pay from the date their counter-parts were absorbed. However, they are not entitled for backwages and other monetary benefits from the date of termination till the date of this Order.

42. The Writ Petition is accordingly allowed. In view of the Order passed above, we need not consider the validity of the Order in O.A.NO. 5099 of 1995 as the petitioners have been directed to be absorbed in accordance with the G.O.Ms.No. 547 M.A. dated: 13.10.1998.

43. No costs.

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G.BIKSHAPATHY, J

B. SESHASAYANA REDDY, J

24-08-2004

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the twenty-fourth day of August Two thousand and four.

CHV

L.R. COPY TO BE MARKED: Yes

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Secretary, Municipal Administration Department, Secretariat, Hyderabad.
2. The Commissioner and Director of Municipal Administration, Andhra Pradesh, Hyderabad
3. The Collector & Chairman Urban Basic Service for Poor Programme, Nizamabad
4. The Municipal Commissioner Nizamabad Municipality, Nizamabad.
5. The Municipal Commissioner Bodhan Municipality, Bodhan, Nizamabad Dist.
6. The Registrar, A.P. Administrative Tribunal, Purani Haveli, Hyderabad.
7. 2CCs to

8) 2CD copies